

12/14/2011

ORDINANCE NO. 49-177

AN ORDINANCE AMENDING SECTIONS 3.30.020, 3.30.060 AND 3.30.070 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO THE DEFINITION OF ENTERTAINMENT ESTABLISHMENTS, THE FEES FOR LICENSING CERTAIN TYPES OF SUCH ESTABLISHMENTS AND AND THE HOURS OF OPERATION THEREOF AND REPEALING THE ORIGINALS OF SECTIONS 3.30.020 AND 3.30.060 OF THE CODE OF THE CITY OF WICHITA, KANSAS.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. Section 3.30.020 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"Definitions. The following words, as used in this Chapter, have the meanings set forth below:

“Alcoholic beverage” means any alcoholic liquor or any cereal malt beverage as those terms are defined by Sections 4.04.010(b) and 4.04.010(h) of the Code of the City of Wichita and amendments thereto.

“Art” or “fine art” means works that are visual in nature, including, but not limited to, paintings, drawings, watercolors, graphics, sculptures, prints, ceramics, textiles and photos which are created by an artist to display or sell and produced or intended primarily for aesthetic purposes rather than utility.

“Art gallery” means any establishment whose primary purpose is to exhibit and/or offer for sale works of fine art or precious/semi-precious metals. For the purposes of this chapter, such an establishment will have a legal capacity

not to exceed 200 people and will not be licensed to sell any alcoholic beverage on a permanent basis. In the event that temporary alcoholic beverage sales are conducted on the premises of an art gallery, such sales shall conform with all applicable state and city laws regulating the same.

‘Ambient music’ means low-level, background music, which is inaudible from any portion of the exterior of the premises. Ambient music does not include music played by a disc jockey, ‘DJ’ or music that is used for karaoke or other live performances. Ambient music may include music played by a jukebox, when such music is inaudible from any portion of the exterior of the premises.

‘Chief of Police’ means the Chief of the Wichita Police Department or his/her designee.

“Coffee shop” means any establishment whose primary purpose is to serve coffee or teas along with food items. For the purposes of this chapter, such an establishment will have a legal capacity not to exceed 100 people and will not be licensed to sell any alcoholic beverage on a permanent basis. In the event that temporary alcoholic beverage sales are conducted on the premises of a coffee shop, such sales shall conform with all applicable state and city laws regulating the same.

‘Entertainment’ means any single event, a series of events, or an ongoing activity or business, occurring alone or as part of another business, to which the public is invited or allowed to watch, listen, or participate, or is conducted for the purposes of holding the attention of, gaining the attention of, or diverting or amusing patrons, including, but not limited to any of the following:

(a) Dancing by patron(s) to live or recorded music.

(b) The presentation of music played on sound equipment operated by an agent or contractor of the establishment, commonly known as ‘disc jockey’ or ‘DJ, or

(c) The presentation of live music whether amplified or un-amplified, or

(d) The presentation of music videos, music concerts or other similar forms of musical entertainment from any source, or

(e) Any amusement or event such as live music or other live performance which is knowingly permitted by any Entertainment Establishment, including, but not limited to, presentations by single or multiple performers, such as hypnotists, pantomimes, comedians, dance acts, concerts, dances, live bands, karaoke or other live music.

‘Entertainment Establishment(s)’ means any event center or any person or entity which provides entertainment as defined by this chapter, or any person or entity which provides a venue for any such entertainment. Such term shall not include book readings, storytelling, the playing of ambient music, or other similar activities for which no fee is charged.

‘Entertainment License’ means a license obtained from the City, pursuant to the provisions of this Chapter, for the purposes of operating an Entertainment Establishment.

‘Event Center’ means premises which are frequently rented out for public or private activities that are not repeated on a weekly basis, and which are not open to the public on a daily basis at times other than when an event is scheduled.

‘Health Officer’ means the Director of Environmental Services or his/her designee.

‘License’ means the authority to conduct the business of an entertainment establishment within the city limits.

‘Licensee’ means any person to whom a current license has been issued under this Chapter authorizing such person to conduct the business of an entertainment establishment within the city limits.

‘Loitering’ means remaining idle in essentially one location, to be dilatory, to tarry, to dawdle and shall include, but not be limited to, standing around, hanging out, sitting, kneeling, sauntering or prowling.

‘Manager’ means a person, regardless of the job title or description, who is operating the establishment or who has discretionary powers to organize, direct, carry on, or control the operations of an Entertainment Establishment or teen club. Authority to engage in one or more of the following functions is prima facie evidence that a person is a Manager of the Entertainment Establishment or teen club:

- (a) Hire or terminate employees; or
- (b) Contract for the purchase of furniture, equipment, or supplies, except for the occasional replenishment of stock; or

(c) Disburse funds of the business, except for the receipt of regularly replaced items of stock; or

(d) Make or participate in making policy decisions regarding operations of the Establishment.

‘Music’ as used in this Chapter shall not apply to radios or ambient music.

“Music Store/Music Only venue” shall mean any establishment that sells musical instruments or offers music lessons or offers open jam session opportunities to musicians. For the purposes of this chapter, such an establishment will have a legal capacity not to exceed 100 people and will not be licensed to sell any alcoholic beverage on a permanent basis. In the event that temporary alcoholic beverage sales are conducted on the premises of a music store/music only venue, such sales shall conform with all applicable state and city laws regulating the same.

"Nonprofit dance" means any dance held by a fraternal, social, school, church or other nonprofit organization which is merely incidental to its principal purpose and where the general public is not solicited or permitted.

‘Non-profit organization’ means an organization or institution organized under Internal Revenue Code Section 501(c)(3) and recognized as a public charity or private foundation established for a religious, charitable, scientific, literary or public safety purpose.

‘Person’ means any individual, owner, operator, corporation, partnership, or association.

‘Photo identification’ means a valid driver’s license, non-driver identification card, government issued identification card or a current school identification card which contains the individual’s photograph.

‘Premises’ means any place where an entertainment establishment is operated or maintained and includes all hallways, bathrooms, parking areas, and other adjacent portions of the premises, which are under the control of the licensee or which are utilized by the licensee and are accessible to the public during operating hours .

‘Responsible Person’ means any person who is any of the following:

A. The person who owns the Entertainment Establishment or teen club; or

B. The person in charge of the Entertainment Establishment or teen club; or

C. The person using the Entertainment Establishment or teen club under a special arrangement, contract or rental agreement; or

D. The Entertainment Establishment’s manager, on-site supervisor, or other employee who is responsible for the operation of the establishment;

‘Superintendent’ means the Superintendent of the Office of Central Inspection or his or her designee.

‘Teen Club’ is any building or part or other enclosed place where a teen dance is held or teen dancing is permitted, not including:

a. an accredited public or private school or college;

b. property owned or controlled by the federal, state, or local government;

c. a facility operated by an organization which has been recognized as exempt from federal income taxation when teen dancing is but an occasional activity incidental to the facility's primary purposes.

SECTION 2. Section 3.30.060 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“License--Fees. A. For any entertainment establishment or teen club other than those types of establishments set forth in subsection (b), the following license fees shall be paid:

For one day \$ 25.00

For one month or less \$100.00

For six months or less \$275.00

For one year or less \$400.00.

B. For any establishment offering entertainment that is regulated by this chapter and is an art gallery, coffee shop or music store/music only venue as those terms are defined in Section 3.30.020, an annual license fee of \$50.00 shall be paid.”

SECTION 3. Section 3.30.070 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“3.30.070. Hours of operation. (a) It is unlawful for any licensee, owner, manager, or responsible person of a teen club to permit or allow entertainment between the hours of midnight and noon. No person, except an employee, shall be on the licensed

premises of a teen club and the premises shall be closed between the hours of 12:30 a.m. and 7:00 a.m.

(b) Other than those types of establishments set forth in subsection (d), it shall be unlawful for any licensee, owner, manager or responsible party of an entertainment establishment to permit or allow entertainment between the hours of two a.m. and noon. No person, except an employee, shall be on the licensed premises of an entertainment establishment and the premises shall be closed between the hours of 2:30 a.m. and 7:00 a.m.

(c) For the purposes of this section, employee shall be defined as an individual who is employed by, works on or upon the licensed premises and receives financial compensation from the licensee.

(d) For any establishment offering entertainment that is regulated by this chapter and is an art gallery, coffee shop or music store/music only venue as those terms are defined in Section 3.30.020, it shall be unlawful for any licensee, owner, manager or responsible party of such an establishment to permit or allow entertainment between the hours of two a.m. and noon. Provided, however, music student recitals, music lessons, or closed recording sessions may be conducted at anytime the premises are open. Such premises shall be closed between the hours of 2:30 a.m. and 5:00 a.m.”

SECTION 4. The originals of Sections 3.30.020, 3.30.060 and 3.30.070 of the Code of the City of Wichita, Kansas, are hereby repealed.

SECTION 5. This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon its passage and publication once in the official city paper.

PASSED by the governing body of the City of Wichita, Kansas, this 10th day of January,
2012.

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

Approved as to Form:

Gary E. Rebenstorf
Director of Law